IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

Crl.MC.No. 3055 of 2006()

CRRP.136/2005 of II ADDL. SESSIONS COURT, PALAKKAD
MC.24/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PALAKKAD

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PETITIONER: PETITIONER/COUNTER PETITIONER

PRABHAKARAN NAIR,
PUTHENVEEDU, PARASSERY, KONGOD.

BY ADV. SRI.K.RAMESH

RESPONDENTS: RESPONDENTS/PETITIONERS

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1. VIJAYALAKSHMI,
W/O.PRABHAKARAN NAIR,
PUTHENVEEDU, KONGOD, PALAKKAD DISTRICT.

2. SUMITHA, D/O.VIJAYALAKSHMI,
PUTHENVEEDU, KONGOD, PALAKKAD DISTRICT.

3. STATE OF KERALA, REP.BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR: SRI.K.A.AKBAR
SRI.JACOB SEBASTIAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 18/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT.J

Crl.M.C. No. 3055 OF 2006

Dated this the 18th day of December 2006

ORDER

The petitioner in this Crl.M.C challenges the direction issued to him by the Courts below to pay the maintenance to the claimant his wife. The trial court directed payment of an amount of Rs.1,000/- as maintenance where as the revisional Court reduced the amount to Rs.750/- per mensem. The marriage is admitted. That the marriage subsists even now is not disputed. That these spouses are living separately is not disputed. There is no specific offer to maintain the wife also. The husband contended that he had executed two documents (Ext.D1 & D2) in favour of the wife conveying property of a total extent of 1.39 cents along with a house in favour of the wife by way of settlement. The wife complained that she was not getting income from the property to sustain and maintain herself. She therefore claimed maintenance under Section 125 of the Cr.P.C

2. The husband contended that he had already discharged his duty to maintain his wife by executing Ext.D1 & D2 documents in her favour. In these documents it was specifically stated that the documents were being executed towards the future maintenance of the claimant wife.

The wife contended that the petitioner was getting an amount of Rs. 3,763/- as pension and an additional amount of Rs.4,500/- by way of his salary from his employment as a security guard in the State Bank of India.

3. The husband had of course contended that he has his mother to be taken care of and he is physically ill and ailing. The claimant wife examined herself as PW1 and the petitioner examined himself as PW1. Exts P1 & P2 and D1 to D10 were marked.

4. Both courts concurrently found that the petitioner was not getting sufficient income from the properties for her maintenance. It is further the accepted case of the petitioner that he has in addition to his pension, salary income from his employment after retirement. While the pension income was only Rs. 3,763/- per mensem- Ext.D9 certificate shows the same, there was a dispute about the salary income from employment. It was conceded that he was having such employment as a security guard and income therefrom. The wife asserted that the income from employment as security guard was Rs. 4,500/- per mensem.

5. No second revision is maintainable and that explains why this

Crl.M.C. under Section 482 of the Cr.P.C has been filed by the petitioner. The assertion of the claimant that she is not getting sufficient income from the property is not seen effectively challenged at all. I have been taken through the evidence of the rival contestants. There is no challenge against the evidence of the claimant that she was not getting sufficient income. No contra-evidence is also adduced. The courts below reckoned the execution of Exts. D1 & D2 as indications pointing to the truth of the case of the claimant that the respondent was involved in some relationship with another woman . Be that as it may - and this question is not raised before this court now, I am satisfied that at this third tier of litigation invoking the extraordinary inherent jurisdiction this Court cannot come to a conclusion that the claimant gets sufficient income from the properties assigned to her in Exts D1 & D2 to maintain herself. A reading of D1 & D2 would reveal that they are executed as settlement deeds- the claimant being a legal heir of the petitioner. The available indications suggest that the petitioner was getting monthly income about Rs.8,000/- . The Courts below cannot be found fault with, in the absence of any better evidence, in accepting the evidence of PW1 that the monthly salary income from his employment as security guard for the petitioner is about Rs. 4,500/-

6. Viewed from any angle the quantum of maintenance directed to paid now 750/- per mensem , even assuming that the claimant must be getting some income from the property assigned to her by the settlement deeds. Ext.D1 & D2 cannot be held to be excessive or perverse as to persuade this court to invoke the powers under Section 482 of the Cr.P.C

7. This Crl.M.C. is in these circumstances dismissed.

R.BASANT, JUDGE

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